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6 Attorneys for Plaintiffs, Brent Beasley, Ernest Glasgow, Cliff
Smith, Greg Banks, Trustees of the Union Roofers Supplemental
7 Annuity Trust, Union Roofers Health & Welfare Fund, Union Roofers
Vacation Fund, Union Roofers Administrative Fund, Union Roofers
8 Joint Apprenticeship and Training Fund; Pacific Coast Roofers Pension Plan

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION
12

13 BRENT BEASLEY, ERNEST
14 GLASGOW, CLIFF SMITH, GREG
BANKS, TRUSTEES OF THE UNION
15 ROOFERS SUPPLEMENTAL
ANNUITY TRUST, UNION
16 ROOFERS HEALTH & WELFARE
FUND, UNION ROOFERS
17 VACATION FUND, UNION
ROOFERS ADMINISTRATIVE
18 FUND, UNION ROOFERS JOINT
APPRENTICESHIP AND TRAINING
19 FUND; PACIFIC COAST ROOFERS
PENSION PLAN;

20 Plaintiffs,

21 v.

22 ALCALA COMPANY, INC.,
a California corporation; and DOES
23 1 through 10, inclusive,

24 Defendants.
25

CASE NO.

COMPLAINT FOR:

1. DELINQUENT CONTRIBUTIONS,
LIQUIDATED DAMAGES,
ATTORNEYS FEES AND COSTS;
2. SPECIFIC PERFORMANCE TO
CONDUCT AN AUDIT

(ERISA Sec. 515, 502(A)(G), 29
U.S.C. Sec. 1145, 1132(A)(C)(2))

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JURISDICTION

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2 1. This is a civil action to recover fringe benefit contributions, liquidated
3 damages, attorneys fees and costs and also for specific performance to conduct an
4 audit. This action arises and jurisdiction of the court is founded on section 301 of
5 the Labor-Management Relations Act of 1947, as amended ("LMRA"), 29 U.S.C. §
6 185a, and sections 502 and 515 of the Employee Retirement Income Security Act of
7 1974, as amended ("ERISA"), 29 U.S.C. §1132 and 1145.

PARTIES AND OTHERS

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9 2. Plaintiffs BRENT BEASLEY, ERNEST GLASGOW, CLIFF SMITH
10 and GREG BANKS are the Trustees of the UNION ROOFERS SUPPLEMENTAL
11 ANNUITY TRUST, UNION ROOFERS HEALTH & WELFARE FUND, UNION
12 ROOFERS VACATION FUND, UNION ROOFERS ADMINISTRATIVE FUND
13 and the UNION ROOFERS APPRENTICESHIP AND TRAINING FUND.

14 3. The above-referenced Trust Funds are self administered by their Board
15 of Trustees and have their offices in the County of Los Angeles, City of Downey.
16 Venue is proper in this Court under Section 502(e)(2) of ERISA, (29 U.S.C. Section
17 1132(E)(2)).

18 4. PACIFIC COAST ROOFERS PENSION PLAN was and is a Regional
19 defined benefit pension plan associated with the United Union of Roofers,
20 Waterproofers and Allied Workers Locals 220 and 36. The Trust Funds referenced
21 in Paragraph 2 above and PACIFIC COAST ROOFERS PENSION PLAN are
22 collectively referred to as "TRUST FUNDS".

23 5. The TRUST FUNDS were created and now exist pursuant to Section
24 302(c) of the Labor Management Relations Act of 1947 as amended, 29 U.S.C.
25 Section 186(c). The TRUST FUNDS are multi-employer plans as defined in ERISA
26 Section 3(37)(A) and as used in ERISA section 515 and 502(g)(2), as amended, 29
27 U.S.C. Section 1145, 1132(g)(2).

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1 6. At all relevant times, ALCALA COMPANY, INC., a California
2 corporation; and DOES 1 through 10, inclusive, (collectively referred to as
3 "EMPLOYER") was and is a California corporation engaged in the roofers,
4 waterproofers and allied industry in Southern California.

5 7. The true names and capacities, whether individual, corporate, associate,
6 or otherwise, of defendants named herein as DOES 1 through 10, are unknown to
7 TRUST FUNDS, who therefore sue the defendants by such fictitious names, and
8 TRUST FUNDS will amend this complaint to show their true names and capacities
9 when the same have been ascertained.

10 8. The United Union of Roofers, Waterproofers and Allied Workers
11 Locals 220 and 36 ("UNION") is a labor organization that is a party to the collective
12 bargaining agreement(s) involved.

13 **FIRST CLAIM FOR RELIEF**
14 **(DAMAGES FOR FAILURE TO PAY FRINGE BENEFIT**
15 **CONTRIBUTIONS)**

16 9. On October 22, 2012, EMPLOYER executed a written Affirmation
17 Agreement with the UNION, ("AFFIRMATION AGREEMENT"). A true and
18 correct copy of the AFFIRMATION AGREEMENT is attached as Exhibit "1".

19 10. The AFFIRMATION AGREEMENT binds EMPLOYER to the
20 Collective Bargaining Agreement and any amendments of the Collective Bargaining
21 Agreement (collectively referred to as "AGREEMENTS").

22 11. The AGREEMENTS require EMPLOYER to make the fringe benefit
23 contributions to TRUST FUNDS in accordance with Article 11 of the Collective
24 Bargaining Agreement based on hours worked or paid to persons performing
25 roofing work for EMPLOYER. Said contributions were agreed to be due and
26 payable on the 15th day of the calendar month following the month during which the
27 hours for which contributions are due were worked or paid.

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1 12. Under the terms of the AGREEMENTS, the Union Roofers
2 Administrative Fund was assigned to collect and remit a portion of the fringe
3 benefit contributions as a sub-agent of the PACIFIC COAST ROOFERS PENSION
4 PLAN to the Union Roofers Contractors Association, to the Southern California
5 Union Roofers Labor Management Trust and to Local Unions 36 and 220 for “dues
6 check-off” contributions. TRUST FUNDS are authorized to sue for sums due to
7 these other collectively bargained entities as part of fringe benefits due.

8 13. The AGREEMENTS provide that prompt payment by employers of the
9 fringe benefit contributions is essential to the operation of the TRUST FUNDS and
10 that it would be nearly impossible to fix the actual damages to the TRUST FUNDS
11 which would result by failure of EMPLOYER to make contributions on or before
12 the 15th day of the month following the month of employment. While contributions
13 are due on the 10th day, there is a 5 day grace period. The AGREEMENTS therefore
14 provide that damages should be presumed to be ten percent (10%) of the delinquent
15 contributions, but in no event less than \$10.00, which would become due and
16 payable from EMPLOYER to the TRUST FUNDS as liquidated damages upon the
17 date following the delinquency date.

18 14. EMPLOYER engaged workers who performed services covered by the
19 AGREEMENTS undertaken by EMPLOYER during the term of the
20 AGREEMENTS.

21 15. EMPLOYER has failed to pay the fringe benefit contributions required
22 by the AGREEMENTS, and there is now due and owing TRUST FUNDS from
23 EMPLOYER for unpaid contributions, the sum of \$34,074.43.

24 16. Demand was made upon EMPLOYER to make payments for the period
25 April 2015 through September 2015. EMPLOYER has not responded to the
26 demand.

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1 17. As a result of the failure to pay fringe benefit contributions,
2 EMPLOYER is liable for liquidated damages provided for under the
3 AGREEMENTS in the sum of \$3,407.45.

4 18. It has been necessary for TRUST FUNDS to engage counsel to bring
5 this action to recover the delinquent fringe benefit contributions. Pursuant to the
6 AGREEMENTS and section 502(g)(2) of ERISA, 29 U.S.C. §1132(g)(2), the
7 EMPLOYER is liable for reasonable attorneys' fees incurred in litigating this
8 matter.

9 19. TRUST FUNDS have complied with all conditions precedent.

10 20. EMPLOYER is delinquent in contributions in a further sum, the exact
11 amount of which is unknown to TRUST FUNDS, and TRUST FUNDS will move to
12 amend this complaint when the true amount of the fringe benefit contribution
13 delinquency is determined.

14 21. TRUST FUNDS have, concurrently with the filing of this complaint,
15 served a copy of same upon the Secretary of Labor and Secretary of the Treasury.

16 **SECOND CLAIM FOR RELIEF**

17 **(SPECIFIC PERFORMANCE TO CONDUCT AN AUDIT)**

18 22. TRUST FUNDS and PACIFIC COAST ROOFERS PENSION PLAN
19 reallege and incorporate herein by reference each and every allegation contained in
20 paragraphs 1 through 21 of its First Claim for Relief. This Second Claim for Relief
21 is asserted as to EMPLOYER, and DOES 1 through 10.

22 23. The AGREEMENTS provide that the PLANS have the specific
23 authority to examine the EMPLOYER's job cost records, general check registers
24 and check stubs, bank statements and canceled checks, general ledgers, cash
25 disbursements ledgers, worker compensation insurance reports, financial statements,
26 corporate income tax returns, employee time cards, payroll journals, individual
27 earnings records of all employees, forms W-2, 1099 and 1096 remitted to the U.S.
28

1 Government, quarterly state tax returns, health and welfare and pension reports for
2 all other trades, cash receipts' journal, copies of all contracts and all material
3 invoices.

4 24. The TRUST FUNDS have requested access to EMPLOYER's business
5 records for the purpose of conducting an audit.

6 25. EMPLOYER has failed and/or refuses to allow the TRUST FUNDS to
7 complete such an audit.

8 26. The TRUST FUNDS have no adequate or speedy remedy at law.

9 27. It has been necessary for TRUST FUNDS to engage counsel to bring
10 this action to compel compliance with the AGREEMENTS, and to recover the
11 attorneys' fees and the costs for which EMPLOYER is liable pursuant to Section
12 502(g)(1) of ERISA and pursuant to the AGREEMENTS.

13
14 WHEREFORE, PLAINTIFFS pray for judgment as follows:

15 **FOR THE TRUST FUNDS' FIRST CLAIM FOR RELIEF:**

16 1. For unpaid contributions in the sum of \$34,074.43;

17 2. For liquidated damages as provided in the AGREEMENTS in the
18 amount of \$3,407.45.

19 3. For interest, as provided in the AGREEMENTS, on the unpaid
20 contributions and liquidated damages from the first of the month following the date
21 due to the present;

22 **FOR THE TRUST FUNDS' SECOND CLAIM FOR RELIEF:**

23 1. That EMPLOYER be compelled to forthwith submit to completion of
24 an audit of EMPLOYER business records covering the period from June 2015
25 through the present, by the TRUST FUNDS' auditors at the premises of
26 EMPLOYER during business hours, at a reasonable time or times, and to allow the
27 auditors to examine and copy the following books, records, papers, documents and
28 reports of EMPLOYER: all job cost records, general check register and check

1 stubs, bank statements and canceled checks, general ledgers, worker compensation
2 insurance reports, financial statements, cash disbursements ledgers, corporate
3 income tax returns, employee time cards, payroll journals, individual earnings
4 records of all employees, forms W-2, 1099 and 1096 remitted to the U.S.
5 Government, quarterly state tax returns, health and welfare and pension report for
6 all other trades, cash receipts' journal, copies of all contracts, and all material
7 invoices;

8 **FOR ALL CLAIMS FOR RELIEF:**

- 9 1. For reasonable attorneys' fees;
10 2. For costs of this action;
11 3. For further contributions according to proof; and
12 4. For such other and further relief as the court deems proper.

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14 Dated: October 27, 2015

DeCARLO & SHANLEY,
a Professional Corporation

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17 By: 

JODI SIEGNER
Attorneys for Plaintiffs,
BRENT BEASLEY, ERNEST
GLASGOW, CLIFF SMITH, GREG
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